IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

NOTICE OF MOTION NO.159 OF 2007
IN
L.C. SUIT NO. 3853 OF 1994

The International Association of Tigers Club
alias Tiger International, through its President,
Shri Jitendra G. Damani .. Plaintiff
v/s.
Municipal Corporation of Greater Mumbai and another .. Defendants

Mr.Jitendra Damani for the plaintiff.
Mr. H.C. Pimplefor the defendant/applicant Nos.4 and 6.

CORAM : A.M. KHANWILKAR, J.
DATED : 18TH JUNE, 2007

P.C.

By this motion, defendant No.1 prays that the said defendant be allowed to file written statement and the delay in filing of the written statement be condoned. Indeed, the suit is pending since 1994. The fact that defendant No.1 was duly served with the writ of summons long back, is also not in dispute. Nevertheless, no appearance was made before the court on behalf of the defendant No.1 till 8th September, 2003. On that date, for the first time, the defendant No.1 was represented by advocate and the adjournment was taken for filing written statement. That request was acceded to by the court on condition that written statement be filed within two weeks. The written statement, however, has not been filed so far but instead, the present motion came to be filed on 9th January, 2007. Ordinarily, the defendant No.1 is obliged to explain the delay since 15th November, 1994 when the writ of summons was served on the said defendant. However, as this court on 8th September, 2003 granted time to the defendant No.1 to file written statement, the delay for the earlier period implicitly

stood excused. Accordingly, the issue to be considered in the present motion is whether delay after 8th September, 2003 deserves to be condoned. The defendant No.1 has stated on affidavit of Vyas Kirtikumar Mahendra dated 9th January, 2007, reasons for the mistake in not filing the written statement in time. Besides the said affidavit, another affidavit of the concerned advocate Mr. K.N. Gaikwad dated 16th June, 2007 has been filed. The reasons mentioned in these affidavits are usual explanations. However, as the case now falls within the realm of mistake of the advocate, the litigant should not be made to suffer for the mistake of the advocate.

2. By way of indulgence, therefore, I am inclined to grant relief in terms of prayer clause (a) of the motion on condition that the concerned advocate Mr. K. N. Gaikwad shall personally pay cost to the plaintiffs quantified at Rs.2500/- within one week from today. On payment of cost, written statement to be tendered on behalf of the defendant No.1, shall be accepted by the office if filed within three weeks from today. Order accordingly. This indulgence will show as the concerned advocate has tendered unconditional apology in the affidavit as well as assured through counsel that in future such mistake will not be repeated.

(A.M. KHANWILKAR, J.)